

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-315

TEN DIAMOND STREET WORCESTER REALTY TRUST

vs.

BEVERLY FARRAR & others.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff is the record owner of residential property located at 10 Diamond Street in Worcester. The property was acquired by quitclaim deed following a foreclosure on or about April 17, 2018. The defendants reside in various residential units within the building. On August 1, 2018, the plaintiff brought a summary process action against the defendants in the Worcester Housing Court. After a bench trial, a judgment of possession entered for the plaintiff on December 21, 2018. On December 31, 2018, the defendants filed a timely notice of appeal; that is, the notice was filed within ten days of the

¹ Darlene Hubert, Brian Beebe, Courtney Farrar, Jeremia Huertas, Joshua Hubert, and Samantha Farrar. We gratefully acknowledge the amicus briefs submitted by the Volunteer Lawyers Project and the Massachusetts Law Reform Institute, who presented at oral argument, and on behalf of Grace C. Ross, both in support of the defendants.

judgment in accordance with G. L. c. 239, § 5 (a). At the same time, the defendants filed motions to vacate the judgment and waive the appeal bond. Both motions were denied without a hearing on January 3, 2019. The defendants did not file a notice of appeal from that order, nor did they file a new notice of appeal from the judgments, as required by Mass. R. A. P. 4 (a) (3), as appearing in 481 Mass. 1607 (2019).²

On January 22, 2019, the plaintiff moved to dismiss the defendants' appeal on the grounds that the defendants' notice of appeal from the judgment of possession (summary process action) became a nullity because the defendants did not file a new notice of appeal from the denial of their motion to vacate the judgment. The judge agreed with the plaintiff and dismissed the defendants' appeal on January 31, 2019. Execution issued on February 1, 2019, the same day the defendants filed a second notice of appeal. The defendants now appeal from the order dismissing the original notice of appeal.³

² Rule 4 (a) (3) (formerly rule 4 [a]) reads: "A notice of appeal filed before the disposition of any timely motion listed in Rule 4 (a) (2) shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the last such remaining motion." The rule was recently revised, but the changes are not relevant here.

³ In the meantime, the plaintiff obtained an execution of the judgment and proceeded to levy on that execution. The defendants filed a motion to stay the eviction, which the Housing Court judge denied. The morning of the scheduled execution, the defendants filed an emergency motion for a stay

The defendants, who are proceeding pro se, essentially contend that (1) we have discretion under Mass. R. A. P. 2, as appearing in 481 Mass. 1603 (2019), to suspend the requirements of rule 4 (a) (3); and (2) we have the authority under Mass. R. A. P. 14 (b), as appearing in 481 Mass. 1627 (2019), to enlarge the time to file a notice of appeal. The plaintiff acknowledges that we have the authority to reinstate the defendants' appeal, but urges us not to do so.

Both rule 2 and rule 14 (b) require the defendants to demonstrate "good cause." In the circumstances presented here, we conclude that because the defendants' original notice of appeal was timely filed in accordance with the relevant statute, it is appropriate to exercise our discretion under rule 2 and rule 14 (b) and grant the relief requested.⁴ The defendants' appeal from the judgment entered on December 21, 2018, is hereby reinstated and the case is remanded for determination of an

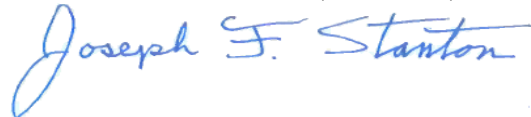
of execution with a single justice of this court. The single justice stayed the eviction pending resolution of the defendants' appeal and expedited the appeal.

⁴ The only limitation in rule 14 (b) is that "neither the appellate court nor a single justice may enlarge the time for filing a notice of appeal beyond [one] year from the date of entry of the judgment or order sought to be reviewed" Mass. R. A. P. 14 (b). Here, however, the judgment entered on December 21, 2018, and the single justice took action only a few months later, so even at the time of our decision, the case is well within the one-year period. We note that, under rule 4 (c), the Housing Court judge had discretion to extend the time for filing the second notice of appeal by up to thirty days.

appropriate appeal bond pursuant to G. L. c. 239, § 5.

So ordered.

By the Court (Green, C.J.,
Vuono & Lemire, JJ.⁵),

A handwritten signature in blue ink that reads "Joseph F. Stanton". The signature is written in a cursive style with a large, looping initial "J".

Clerk

Entered: June 24, 2019.

⁵ The panelists are listed in order of seniority.